

## TEXAS RACING COMMISSION

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# COMMITTEE ON RULES

Tuesday, July 30, 2013

10:30 a.m.

Texas Animal Health Commission

2105 Kramer Lane

Austin, Texas 78758

## Agenda

The Committee will accept comments in response to the publication of the following rule proposals in the July 5, 2013, edition of the *Texas Register*:

- A. Proposal to Amend Rule 303.41, Allocation of Race Dates
- B. Proposal to Amend Rule 309.151, Change of Ownership, Board of Directors, or Management Committee
- C. Proposal to Amend Rule 309.355, Grading System

The Committee will discuss the following requests for rule amendments:

- D. Proposal to Amend Rule 311.101, Horse Owners
- E. Proposal to Amend Rule 311.102, Greyhound Owners
- F. Proposal to Amend Rule 319.3, Medication Restricted
- G. Proposal to Amend Rule 319.5, Report of Treatment by Veterinarians

The public will be given an opportunity to address the Committee and identify any potential subjects that it would like placed on the agenda for discussion at a future committee meeting.

**CHAPTER 303. GENERAL PROVISIONS**  
**SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION**

**Sec. 303.41. Allocation of Race Dates**

(a)-(i) (No change.)

(j) Change in Race Date Allocation.

(1)-(2) (No change.)

(3) The executive secretary may approve an association's request to add, delete, or modify live race dates, provided that the request:

(A) does not add any live race dates that are more than fourteen calendar days preceding the start of the Commission-approved race meet or more than fourteen days following the end of the Commission-approved race meet;

(B) is supported in writing by each breed organization affected by the change;

(C) is supported in writing by each association that is affected by the change; and

(D) in the case of a horse racing association, is supported in writing by the horsemen's organization.

(4) In determining whether to approve a request under this subsection, the executive secretary may consider the effect that approving the request would have on the workload and budget status of the Commission.

(5) For purposes of this subsection, an allocation of live race performances may be changed in the same manner as a change in the allocation of live race dates.

**CHAPTER 309. RACETRACK LICENSES AND OPERATIONS**  
**SUBCHAPTER B. OPERATIONS OF RACETRACKS**  
**DIVISION 3. OPERATIONS**

**Sec. 309.151. Change of Ownership, Board of Directors, or Management Committee.**

(a)-(c) (No change.)

(d) The transfers of pecuniary interests in an association described by this subsection are considered to have the prior approval of the Commission, subject to the right of the Commission to object to the transfer after it is informed of the transfer and has performed any background investigation required by the Commission or the Department of Public Safety. Not later than 10 days after the effective date of a transfer to which this subsection applies, the transferee shall submit to the Commission information regarding the transfer on a form prescribed by the Commission and the Department of Public Safety. If the transferee is not an individual, the form required by this subsection must be submitted for all officers, directors, partners, and members of any management committee of the transferee. The following transfers are considered to have the prior approval of the Commission in accordance with this subsection:

(1) (No change.)

(2) a transfer to any person of a direct or indirect beneficial ownership interest or a warrant or other option to buy a direct or indirect beneficial ownership interest in an association provided that:-

~~(A) the interest was transferred after having been registered under the Federal Securities Act of 1933; and~~

~~(B) following the transfer, the person owns, directly or indirectly, less than 5.0% of the total beneficial ownership interests in the association, and:-~~

(A) the interest was transferred after having been registered under the Federal Securities Act of 1933; or

(B) the person is an individual and has submitted:

(i) the person's name, residence address and telephone number, business address and telephone number, date of birth, physical description, and driver's license number; and

(ii) if requested by the Department of Public Safety, a set of fingerprints in a form approved by the Department.

(3) Upon receipt of the background report from the Department of Public Safety or verification by the Department that no further background check will be required, the executive secretary shall notify the association within 10 days as to whether a transfer under this subsection should be considered approved or whether the executive secretary will seek further review by the Commission.

*§309.151. Change of Ownership, Board of Directors, or Management Committee.*

(a) - (c) (No change.)

(d) The transfers of pecuniary interests in an association described by this subsection are considered to have the prior approval of the Commission, subject to the right of the Commission to object to the transfer after it is informed of the transfer and has performed any background investigation required by the Commission or the Department of Public Safety. Not later than 10 days after the effective date of a transfer to which this subsection applies, the transferee shall submit to the Commission information regarding the transfer on a form prescribed by the Commission and the Department of Public Safety. If the transferee is not an individual, the form required by this subsection must be submitted for all officers, directors, partners, and members of any management committee of the transferee. The following transfers are considered to have the prior approval of the Commission in accordance with this subsection:

(1) (No change.)

(2) a transfer to any person of a direct or indirect beneficial ownership interest or a warrant or other option to buy a direct or indirect beneficial ownership interest in an association provided that[-]

~~[(A) the interest was transferred after having been registered under the Federal Securities Act of 1933; and]~~

~~[(B) the total interest being transferred is less than 1.0% or, following the transfer, the person owns, directly or indirectly, less than 5.0% of the total beneficial ownership interests in the association, and: [-]~~

(A) the interest was transferred after having been registered under the Federal Securities Act of 1933; or

(B) the individual transferee or each individual with a direct or indirect interest in the transferee has submitted:

(i) the individual person's name, residence address and telephone number, business address and telephone number, date of birth, physical description, and driver's license number; and

(ii) if requested by the Department of Public Safety, a set of fingerprints in a form approved by the Department

(3) notwithstanding paragraph (2), above, a transfer to any person of a direct or indirect beneficial ownership interest or a warrant or other option to buy a direct or indirect beneficial ownership interest in an association is not considered to be preapproved if:

(A) the transfer will result in a change in the control of the association, or

(B) would result in the transferee's total beneficial interest increasing from less than 5.0% to 5.0% or more.

(4) Upon receipt of the background report from the Department of Public Safety or verification by the Department that no further background check will be required, the executive secretary shall notify the association within 10 days as to whether a transfer under this subsection should be considered approved or whether the executive secretary will seek further review by the Commission.

**CHAPTER 309. RACETRACK LICENSES AND OPERATIONS**  
**SUBCHAPTER B. OPERATIONS OF RACETRACKS**  
**DIVISION 3. OPERATIONS**

**Sec. 309.355. Grading System.**

(a)-(k) (No change.)

(l) The racing secretary may schedule up to eight mixed grade races each week. The racing judges may approve additional mixed grade races each week if there will otherwise be an insufficient number of greyhounds on the active list to complete the scheduled performances. A mixed grade race must be designated by the letter "T" in the racing program.

(m)-(o) (No change.)

**TEXAS RACING COMMISSION  
COMMITTEE ON RULES**

Date of Request: 05/31/13

***Request for Proposed Change to an Existing Rule or  
Addition of a New Rule to the Rules of Racing***

Please submit this information to the attention of the Executive Director *at least 14 days* in advance of the next scheduled Committee on Rules meeting. An electronic form is available to assist in your submission or feel free to add additional pages as necessary in order to provide as much detail as possible. Filing this request does not guarantee that your proposal will be considered by the Committee on Rules.

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email: [info@txrc.state.tx.us](mailto:info@txrc.state.tx.us)

**Contact Information:**

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Mailing address:	8505 Cross Park Dr Ste 110 Austin Texas 78754		

Check appropriate box(s)

<input type="checkbox"/>	Personal Submission <i>OR</i>
<input checked="" type="checkbox"/>	Submission on behalf of <u>Texas Racing Commission</u> <small>(Name of Organization)</small>

<input checked="" type="checkbox"/>	If known, Proposed Change to Chapter:	Chapter: <u>311</u>	Rule: <u>311.101(a)(5)</u>
<input type="checkbox"/>	If known, Proposed Addition to Chapter:	Chapter: <u>311</u>	Rule: <u>311.102(a)(5)</u>
<input type="checkbox"/>	If known, Other Rules Affected by Proposal:	Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____

### **A. Brief Description of the Issue**

Currently, there are no licensing requirements for the parent or guardian of a minor that owns a race animal. This situation could easily be manipulated by someone who wanted to hide ownership or circumvent the licensing system. For example, a person who is ineligible for a license could place a race animal in a minor's name.

In 2010, the Texas Racing Commission revised rule 313.301(c) relating to Eligibility to Claim for a minor child. The rule requires co-signatures by a licensed adult parent or guardian. However, this only addresses minor owners claiming a horse.

The Texas Racing Commission rule proposal will require all parents or guardians for minor owners to be licensed.

### **B. Discussion of the Issue and Problem**

Currently, Texas Racing Commission allows minors to be licensed as owners. The parent or guardian must sign a financial responsibility form but is not required to be licensed. The Commission does not have jurisdiction over the unlicensed parent or guardian. The Texas Racing Commission does not conduct a background check on the parent or guardian.

### **C. Possible Solutions and Impact**

The new proposed rule would ensure that the parent or guardian for owner minors are licensed and provide a fingerprint card for a background check.

Currently, the Commission licenses 39 minors as owners. Out of the 39 minors, 11 do not have a licensed parent or guardian. This rule change presents a small impact to the industry.

### **D. Support or Opposition**

The Commission does not anticipate any opposition to this revision.

## **E. Proposal**

### **RULE 311.101. HORSE OWNER**

(a) General Provisions.

(1)-(4) No Change

(5) If the registered owner of a horse is a minor, a financial responsibility form approved by the executive secretary must be signed by the parent or guardian of the owner assuming financial responsibility for the debts incurred for the training and racing of the horse. The parent or guardian and the minor must be currently licensed to participate in racing.

(b)-(g) (No change.)

### **RULE 311.102. GREYHOUND OWNER**

(a) General Provisions.

(1)-(4) No Change

(5) If the registered owner of a greyhound is a minor, a financial responsibility form approved by the executive secretary must be signed by the parent or guardian of the owner assuming financial responsibility for the debts incurred for the training and racing of the greyhound. The parent or guardian and the minor must be currently licensed to participate in racing.

(b)-(d) (No change.)

**TEXAS RACING COMMISSION  
COMMITTEE ON RULES**

Date of Request: July 22, 2013

***Request for Proposed Change to an Existing Rule or  
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Check appropriate box(s)

<input type="checkbox"/>	Personal Submission <i>OR</i>
<input checked="" type="checkbox"/>	Submission on behalf of <u>TxRC Staff</u> <small>(Name of Organization)</small>

<input checked="" type="checkbox"/>	If known, Proposed Change to Chapter:	Chapter: <u>319</u>	Rule: <u>319.3</u>
<input type="checkbox"/>	If known, Proposed Addition to Chapter:	Chapter: _____	Rule: _____
<input type="checkbox"/>	If known, Other Rules Affected by Proposal:	Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____

## **A. Brief Description of the Issue**

The national racing industry, led by the Jockey Club, the Racing Medication and Testing Consortium (RMTC), and the Association of Racing Commissioners International (ARCI), is moving towards uniform standards for medications and penalties. These uniform standards promote regulatory consistency across the country and reduce confusion among trainers and owners.

In order to adopt the national standards relating to nonsteroidal anti-inflammatory drugs (NSAIDs), the Commission's rules will require amendment.

## **B. Discussion of the Issue and Problem**

The Drug Testing Standards and Practices Program of the Association of Racing Commissioners International (ARCI) has recently modified its Uniform Classification Guidelines and Recommended Penalties to include thresholds for seventeen commonly used therapeutic medications. In addition, ARCI is considering seven other medications for inclusion on a schedule of "Special Instance" therapeutic substances used in emergency, infectious disease, or acute injury related situations. Use of these special instance medications would require disclosure and increased pre-race veterinary scrutiny.

Executive Director Trout has already adopted most of the guidelines through his authority to promulgate drug classifications and enforcement guidelines under Rules 303.8 and 319.304, and his authority under Rule 319.3(d) to establish thresholds for *trace* levels of therapeutic drugs. However, three of the permissible drugs on ARCI's list are NSAIDs that leave more than trace levels in a horse's system. These NSAIDs are phenylbutazone, ketoprofen, and flunixin. While ARCI's thresholds for these medications are more than trace levels, the Racing Medication and Testing Consortium's guidance to ARCI has been that the proposed thresholds are low enough to prevent interference with the pre-race inspection or will not change the outcome of a race.

Commission Rule 319.3(b) currently provides that the maximum permissible concentration of phenylbutazone in a horse's serum or urine is 2.0 micrograms per milliliter. This level was lowered by the Commission from the previous standard of 5.0 micrograms per milliliter after ARCI lowered its recommended threshold level in 2011.

The Commission's rules do not permit any level of ketoprofen or flunixin to be found in a horse's body. ARCI's recommended threshold for ketoprofen is 10 nanograms per milliliter of plasma or serum and the recommended threshold for flunixin is 20 nanograms per milliliter of plasma or serum. In addition, ARCI sets out lower thresholds for phenylbutazone and flunixin if they are found in conjunction with other NSAIDs, along with higher penalties if those thresholds are violated.

## **C. Possible Solutions and Impact**

The Commission could delete subsection (b) of Rule 319.3 and amend Rule 319.3(d) to strike the word "trace." This would allow the executive director to set thresholds for any therapeutic medication, regardless of whether the amount constituted a trace level.

By allowing the executive director greater latitude in setting threshold levels for therapeutic medications, the Commission will be able to more quickly adopt any changes that ARCI makes to its recommendations.

Adopting the ARCI standards would also establish thresholds for ketoprofen and flunixin. However, if two or more NSAIDs are used in conjunction (stacked) and appear in the post-race test, ARCI's guidelines call for heavy penalties. To compare:

- the standard penalty for a first phenylbutazone violation (in a concentration of 2.1 to 9.9 mcg/ml) is a \$250 fine, with no suspension or loss of purse;
- the standard penalty for a first stacking violation (the presence of more than one of the three approved NSAIDs, with the exception of Phenylbutazone in a concentration below 0.3 mcg/ml) is a minimum \$500 fine, 15 day suspension and loss of purse.

#### **D. Support or Opposition**

ARCI's model thresholds for therapeutic medications were initially proposed by the Racing Medication and Testing Consortium after consultation with the American Association of Equine Practitioners and The Jockey Club. These thresholds have been adopted by eight states: New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and Massachusetts.

However, at the Commission's Safety and Medication Committee meeting in 2006, staff raised the topic of implementing thresholds for ketoprofen and flunixin, along with the heavier penalties for stacking. Many attendees preferred leaving phenylbutazone as the only permissible NSAID in order to avoid the risk of inadvertent stacking violations.

#### **E. Proposal**

##### **RULE 319.3. MEDICATION RESTRICTED**

(a) Except as otherwise provided by this section, a horse or greyhound participating in a race may not carry in its body a prohibited drug, chemical, or other substance.

~~(b) The maximum permissible plasma or serum concentration of phenylbutazone in horses is 2.0 micrograms per milliliter.~~

~~(b)(e)~~ Furosemide at or below the approved tolerance level in a horse that has been admitted to the furosemide program is permissible. The approved tolerance level shall be published on the list of therapeutic drugs posted under subsection (d) of this section.

~~(c)(d)~~ Levels ~~Trace levels~~ of drugs which are therapeutic and necessary for treatment of illness or injury in race animals are permissible, provided:

(1) the therapeutic drug is on a written list approved by the executive secretary, maintained by the commission

veterinarian, and posted in the commission veterinarians' office; and

(2) the maximum permissible urine or blood concentration of the drug does not exceed the published limit, if any, on the written list of therapeutic drugs.

(d)~~(e)~~ Except as otherwise provided by this chapter, a person may not administer or cause to be administered to a horse or greyhound a prohibited drug, chemical, or other substance, by injection, by oral or topical administration, by rectal infusion or suppository, by nasogastric intubation, or by inhalation, and any other means during the 24-hour period before the post time for the race in which the animal is entered.

(e)~~(f)~~ A positive finding by a chemist of a prohibited drug, chemical, or other substance in a test specimen of a horse or greyhound collected before or after the running of a race, subject to the rules of the commission relating to split specimens, is prima facie evidence that the prohibited drug, chemical, or other substance was administered to the animal and was carried in the body of the animal while participating in a race.

**TEXAS RACING COMMISSION  
COMMITTEE ON RULES**

Date of Request: July 22, 2013

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<input type="checkbox"/>	If known, Proposed Addition to Chapter:	Chapter: _____	Rule: _____
<input type="checkbox"/>	If known, Other Rules Affected by Proposal:	Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____

## **A. Brief Description of the Issue**

The current rule regarding access to veterinary records does not acknowledge the Commission veterinarians' need to access those records in order to fulfill their obligation under Rule 319.4(c) to oversee all veterinarians practicing at a racetrack.

## **B. Discussion of the Issue and Problem**

Rule 319.5, Report of Treatment by Veterinarians, provides that veterinarians must maintain treatment records and provide those records to the stewards or judges within 24 hours of a request. The rule also provides that the contents of the records are confidential except in a hearing conducted by the stewards or judges.

Rule 319.4(c) provides that the Commission veterinarians oversee all veterinarians practicing at a racetrack, and that the Commission veterinarians may observe any of a veterinarian's practices at the racetrack and may require a veterinarian to report at any time regarding the veterinarian's practices.

In order to adequately oversee the veterinarians' practices, the Commission veterinarians must necessarily be able to examine those veterinarians' treatment records. However, Rule 319.5 does not explicitly provide the necessary access. Instead, the rule only provides access to the stewards and judges, who do not have the training or experience needed to adequately assess those records. The rule also provides that the records may only be disclosed in a hearing, which implicitly, but not explicitly, recognizes that the records would have to be incorporated into the Commission's investigatory files before an investigator could present them in a hearing.

## **C. Possible Solutions and Impact**

The proposal would provide Commission veterinarians with the same right of access to veterinary records as the stewards and judges. The proposal would also recognize that veterinary records provided under the rule would become part of the Commission's confidential investigatory files. Under Section 2.15 of the Texas Racing Act, the contents of the Commission's investigatory files may only be disclosed in a criminal proceeding, in a hearing conducted by the Commission, on court order, or with the consent of the party being investigated.

## **D. Support or Opposition**

To be determined.

## **E. Proposal**

### **RULE 319.5. REPORT OF TREATMENT BY VETERINARIANS**

(a) Veterinarians who treat race animals shall maintain reports of the treatment in strict compliance with the requirements of the Texas State Board of Veterinary Medical Examiners.

Veterinarians shall make the report available to a steward, ~~or~~ judge or Commission veterinarian within 24 hours of a request.

(b) A report of treatment provided to the stewards, ~~or~~ racing judges or a Commission veterinarian pursuant to subsection (a) of this section becomes part of the confidential investigatory files of the Commission. ~~is confidential and its contents may not be disclosed except in a proceeding before the stewards or racing judges or the commission.~~